

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

MALCOLM KENDREAL PATRICK

PETITIONER

VERSUS

CIVIL ACTION NO. 5:21cv15-DCB-FKB

**JOHN DOE, NELSON ESTESS, and JUDGE
MICHAEL TAYLOR**

RESPONDENTS

ORDER DENYING RECONSIDERATION

BEFORE THE COURT is pro se Petitioner Malcolm Kendreal Patrick's letter [23], which the Court construes as a motion to reconsider. May 25, 2021, the Court dismissed this case without prejudice. The habeas claims were dismissed for failure to exhaust, and the claim for damages was dismissed as not proper in habeas. On July 22, Petitioner filed the instant motion, asking the Court to reopen the case, claiming that he did not know that adding a claim for damages would lead to dismissal. The Court has considered Petitioner's submission and the relevant legal authority.

Because the motion was filed over twenty-eight days past the Final Judgment, this motion shall be treated as one arising under Federal Rule of Civil Procedure 60. Fed. R. Civ. P. 59(e); *Forsythe v. Saudi Arabian Airlines Corp.*, 885 F.2d 285, 288 (5th Cir. 1989). Under Federal Rule of Civil Procedure 60(b), the:

court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Petitioner contends this case was dismissed because he amended his Petition to add a request for damages. He pleads ignorance and asks the Court to reopen this case as to his claim for release. However, this case was not dismissed because Petitioner added a request for damages. His request for habeas relief was dismissed for failure to exhaust state remedies, and his request for damages was dismissed because it was not proper in this habeas action. He has not demonstrated a reason to reconsider the Order of Dismissal [20] and Final Judgment [21] in this case. The motion is therefore denied.

IT IS THEREFORE ORDERED AND ADJUDGED that pro se Petitioner Malcolm Kendreal Patrick's letter [23], which the Court construes as a motion to reconsider is denied.

So ordered and adjudged, this the 14th day of September, 2021

s/David Bramlette
UNITED STATES DISTRICT JUDGE